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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

MICHAEL L. BULKLEY, PETITIONER

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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14 pp

QUESTIONS PRESENTED

1. Whether a person may make a valid assertion of his Fifth Amendment privilege in lieu of disclosure to income and computational questions on an individual income tax return?

2. To what specific items of return information may the Fifth Amendment privilege be asserted?

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V.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

A writ of certiorari is respectfully sought to review the Court of Appeals Order affirming the conviction of the Petitioner in a criminal case entered on July 5, 1984.

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OPINIONS BELOW

The Order and Judgment of the Court of Appeals affirming the criminal conviction of the Petitioner in a jury trial appears in Appendix A to this Petition and is currently unreported. The Order of the Court of Appeals denying a Petition for Rehearing En Banc also appears in Appendix A.

JURISDICTION

The Judgment of the court below (Appendix A, infra, p. 26) was entered on July 5, 1984. A timely Petition for Rehearing was denied on August 1, 1984, fifteen days after its filing (Appendix A, infra, p. 30). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

The constitutional provision involved is the Fifth Amendment which provides, in pertinent part, as follows:

> No person... shall be compelled in any criminal case to be a witness against himself....

The statutes involved in this case are 26 U.S.C. Sec. 6103(b), (h), and (i) (Appendix B) and 26 U.S.C. Sec. 7203, which provides that:

> Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a

corporation) or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure.

STATEMENT OF THE CASE

For the years of 1979 and 1980, Petitioner asserted his Fifth Amendment privilege to certain specific questions on his federal income tax returns resulting in returns from which a tax liability could not be calculated. On February 1, 1983, Petitioner was formally charged by information with failure to file income tax returns for the years 1979 and 1980.

A jury trial was held before the Honorable Ewing T. Kerr on April 15, 1983, in which the jury was instructed that a return which does not have enough information to calculate the tax is not a return. Further, no good-faith jury instruction was given, and no good-faith defense was allowed to be presented. The jury found the Petitioner guilty on both charges. On June 1, 1983, the

trial court imposed sentence and the appeal to the Tenth Circuit Court of Appeals followed.

The Tenth Circuit Court of Appeals affirmed the conviction by the Order and Judgment of July 5, 1984, saying that while it is conceivable that a valid claim of privilege could be asserted to specific items of information, because Petitioner's return contained no information upon which his tax liability could be determined, it constituted no return at all. A timely Petition for Rehearing En Banc was denied on August 1, 1984.

REASONS FOR GRANTING THE WRIT

I

The relationship of individual income tax return sufficiency and the Fifth Amendment has had a long legal history. In the case of U.S. v. Sullivan, 274 U.S. 259, the Supreme Court reversed in part the finding of the lower court, Sullivan v. U.S., 15 F.2d 809 (4th Cir. 1926), which held that, since Sec. 257 (42 Stat. 270 [Comp. St. Sec. 6336 1/8 x]), the predecessor disclosure statute to 26 U.S.C. Sec. 6103, did not confer secrecy, the Fifth Amendment privilege was a full defense to an indictment for willful failure to file a return when no return had in fact been filed. The Supreme Court held that while the Fifth Amendment does not apply to disclosures sought on the return, it must be

asserted to specific questions on the return and the return filed.

Since Sullivan did not make any assertions of the Fifth Amendment privilege to any of the questions on the return (he did not in fact file any returns), the Sullivan Court did not decide which return questions may or may not be objected to under the Fifth Amendment. The Court speculated, however, that, "It would be an extreme if not extravagant application of the 5th Amendment to say that it authorized a man to refuse to state the amount of his income because it had been made in crime."

This Court examined this question again in dictum forty-nine years later in Garner v. U.S., 424 U.S. 648, saying that the Fifth Amendment privilege could not be asserted to the questions on name and address. Again, however, Petitioner

Garner had not made any Fifth Amendment assertions in lieu of disclosures on his individual income tax return. Thus, this Court has never definitely settled the issue of which specific questions may be objected to on an income tax return. While the Supreme Court has never settled this issue, the lower courts have used the above dicta to justify a legal presumption which says that a return which does not have enough information to calculate the tax is not a return for 26 U.S.C. 7203 purposes.

The Fifth Amendment privilege is relevant to disclosures on tax returns only if such disclosures can be used against the taxpayer in later criminal proceedings. 26 U.S.C. Sec. 6103(h) and (i) mandate that the return information disclosed by the taxpayer on his return can be so used in criminal proceedings. Further, return information is defined

by 26 U.S.C. Sec. 6103(b)(2) as, among other things, the nature, source, and amount of income deductions, credits, payments, receipts, exemptions, liabilities, net worth, and tax liability. In these circumstances, it would be reasonable to presume that the Fifth Amendment privilege may be validly asserted to any item of return information which could be used against an individual in a later criminal proceeding, irrespective of the ability to calculate the tax liability from the information disclosed. Under the circumstances of the disclosure statutes, it would certainly be artificial and unreasonable to presume that, absent immunity, the validity of Fifth Amendment assertions depends on the ability of the information disclosed to calculate the tax.

Since there does not appear to be

any rational legal basis for the presumption that a return must have enough information to calculate the tax, it is not surprising that the circuits are split as to its meaning and justification. The Fifth and Eleventh Circuit Courts of Appeals hold that a person may exercise his Fifth Amendment privilege by objecting to the source of the income but listing the amount as miscellaneous. See U.S. v. Johnson, 577 F.2d 1304 (5th Cir. 1978). The Second and Ninth Circuit Courts of Appeals hold that a person may exercise his Fifth Amendment privilege by objecting to any question on the return, including the nature, source, and amounts of income. See U.S. v. Barnes, 604 F.2d 121 (2d Cir. 1979), and U.S. v. Neff, 615 F.2d 1235 (9th Cir. 1980). However, both the Second and Ninth Circuits insist that an individual

income tax return, to be sufficient for the purposes of 26 U.S.C. Sec. 7203, must have all the information necessary to calculate the tax. See U.S. v. Schiff, 612 F.2d 73 (2d Cir. 1979), and U.S. v. Neff, supra.

Thus, the presumption that a return must have enough information to calculate the tax for the purposes and requirements of 26 U.S.C. Sec. 7203 has different meanings in different circuits. In the Fifth and Eleventh Circuits, it means that no one for any reason can make a valid claim of the Fifth Amendment privilege to any income or computational questions. A valid claim in the circuits may only be made to the question on occupation. In the Second and Ninth Circuits, the above presumption means that if assertion of the privilege results in a return from which the tax cannot be calculated, then

the assertions are labeled as "blanket assertions" and are automatically ruled invalid. Of course, given the step-by-step process of disclosure of personal financial information and calculation necessary to determine the tax liability on the return form, even one valid claim of privilege would result in another valid claim each time it subsequently entered the calculation and result in a return from which the tax could not be calculated.

The contradiction inherent in the relationship of the two presumptions in the Second and Ninth Circuits was never more apparent than in Conforte v. C.I.R., 692 F.2d 587 (9th Cir. 1982). In order to avoid having to rule on the validity of their claims of privilege to all questions dealing with gross income and deductions, the Ninth Circuit was forced to hold that while the Confortes'

returns were not returns sufficient for the purposes of 26 U.S.C. Sec. 7203, they were returns for the purposes and requirements of 26 U.S.C. Secs. 6211(a)(1)(A) and 1348(c). Thus, the Confortes could have been prosecuted under 26 U.S.C. Sec. 7203 for willful failure to file a return, when they had in fact filed returns sufficient for at least two IRS Code statutes. The Confortes' claims of privilege, which were most likely valid according to the court, would have been no defense to the charge of willful failure to file, in contradiction to Garner v. U.S., supra.

The Tenth Circuit Court of Appeals and the trial court in the instant case used the presumption that the return must have enough information to calculate the tax to be a return under 26 U.S.C. Sec. 7203, but justified the presumption differently than the Fifth,

Eleventh, Second, and Ninth Circuits. The Tenth Circuit's justification is based on U.S. v. Porth, 426 F.2d 519 (10th Cir. 1970), which is the genesis of all the recent lower court decisions on the relationship of the Fifth Amendment privilege and 26 U.S.C. Sec. 7203, including U.S. v. Irwin, 561 F.2d 198 (10th Cir. 1977), cited by the Tenth Circuit in affirming the conviction in the instant case.

The Porth Court basically said that since the purpose of the tax return is to calculate the tax, this requires the disclosure of all the information requested by the form. Therefore, an individual income tax return must contain the information necessary to calculate the tax. Failure to disclose the required information for any reason automatically renders that return not a return for the purposes and requirements

of 26 U.S.C. Sec. 7203. This presumption then conflicts not only with the traditional interpretation of the Fifth Amendment privilege, but also with 26 U.S.C. Sec. 6103(b), (h), and (i) and the decisions of this Court in Garner v. U.S., supra, and Badaracco v. C.I.R., 104 S.Ct. 756 (1984). Traditionally, the validity of assertions of the Fifth Amendment testimonial privilege does not depend on the purposes and requirements of the statutes compelling the testimony. 26 U.S.C. Sec. 6103(b) definitely separates the return from the return information. It is not possible to use the definition of return sufficiency from a statute which defines the return in terms of the information the form requires, 26 U.S.C. Sec. 6011, and then in the same Code use such definition to determine return sufficiency for a statute which

definitely separates the return from the information the form requires. If a return is a return for any statute in the IRS Code, it should be a return for the purposes and requirements of 26 U.S.C. Sec. 7203. Since Petitioner's returns purport to be in compliance with 26 U.S.C. Sec. 6103(b), since the Fifth Amendment privilege is applicable to disclosure of return information under 26 U.S.C. Sec. 6103(h) and (i), and since Petitioner signed the returns; then if the Petitioner's Fifth Amendment claims are valid, he filed the required returns.

Twelve years ago the dissent in the en banc rehearing of Garner in the Ninth Circuit spoke of the dilemma that could face a taxpayer if he asserted his Fifth Amendment privilege on his individual income tax return. The dissent argued that since, at that time, no court had

ever indicated that specific Fifth Amendment objections to specific questions on the return would, if valid, be a defense to prosecution under 26 U.S.C. Sec. 7203, a person may very well be successfully prosecuted under Sec. 7203 for valid assertions of the privilege made on the return.

> Thus, as a practical matter, in order for Garner to claim a privilege on the return he would have to enter a claim of privilege at the lines calling for his source of income, his profession, and throughout the return where step by step calculations are called for. He would have disclosed only his name and taxable income figure. This would subject him to prosecution for failure to file a return at all, United States v. Klee, 494 F.2d 394 (9th Cir., 1974), United States v. Porth, 426 F.2d 519 (10th Cir. 1970), and the substantial risk that a court would determine that he was not privileged to do so under Sullivan.

Garner v. U.S., 501 F.2d 228, 256 (1972) (Dissenting opinion Koelsh, J.). While this Court in Garner definitely settled

that valid and timely claims of the Fifth Amendment were a full defense to a Sec. 7203 prosecution, Petitioner, nevertheless, finds himself in just such a dilemma now.

The Tenth Circuit in the instant case has implicitly narrowed the holding in Garner to only the question on occupation, thereby subjecting the Petitioner to a Sec. 7203 prosecution in which a validly and timely assertion of the privilege is not a defense. The trial court in the instant case denied Petitioner's motion for acquittal at the end of the presentation of the Respondent's case. Thus, before the Petitioner was able to present his case and without Respondent introducing any evidence at all as to the invalidity of Petitioner's Fifth Amendment claims, the trial court had ruled that, as a matter of law, the validity of Petitioner's

claims were, under the presumption of return sufficiency in Sec. 7203 prosecutions in Porth, irrelevant to the charge. Since these claims were irrelevant, any evidence in support of the validity of Petitioner's claims was irrelevant, which in turn negated any chance of Petitioner effectively presenting a valid assertion or a good-faith assertion as a defense.

II

Not only does this case present important constitutional questions affecting the personal rights of the Petitioner as presented above, but it also presents important constitutional and political questions that affect millions of people and the continued efficient operations of many government departments.

The perceived purpose of the disclosure of information on individual

income tax returns varies with the government department receiving it. From the point of view of the Treasury Department, the purpose of the disclosure of the information is to collect taxes and enforce the civil and criminal tax laws. From the point of view of state governments, the purpose of the disclosure of the information on federal returns is to enforce state civil and criminal tax laws. Seventy-seven million federal returns were so disclosed to state governments in 1983. From the point of view of federal and state agencies concerned with child support, the purpose of the information disclosed in federal returns is to enforce child support laws. Information from 1.6 million federal returns was so disclosed in 1983. This same argument is true for many federal and state agencies, see 26 U.S.C. Sec.

6103 (Appendix B). Finally, from the point of view of the Department of Justice, the purpose of return information is to provide a convienent and efficient pool of information useful in federal civil and criminal tax and non-tax investigations and prosecutions. The returns and return information disclosed to the Department of Justice for federal non-tax criminal investigations and prosecutions have risen more than sevenfold since 1976; from 8,000 to 58,550. The reasons that the Department of Justice sought the statute allowing for such disclosure (26 U.S.C. Sec. 6103(i)) was, as Senator Weicker put it, "strictly for matters of expense and expediency." Vol. 122 Congressional Record (Unbound) July 27, 1976 (S 12588).

It is convenient, efficient, and inexpensive to use return information in criminal prosecutions. However, under the presumption of return sufficiency advanced in this and similar cases, this information is forced from the taxpayer by placing him in a legal dilemma. He can either supply the information sought and incriminate himself, he can lie, or he can assert his Fifth Amendment privilege to specific questions on the return form with the knowledge that the mere assertion of the objections itself is a criminal act under Sec. 7203. From the point of view of the taxpayer, this has the effect of compelling confessions on the return form. The danger of this was prophesized in the Garner dissent:

> Ordinarily, coercion of incriminating answers gives rise to a claim of privilege--the result should not be altered by the fact that the coercion is created by a neutral regulatory statute. No

matter how overwhelmingly non-criminal and apparently innocuous the purpose of the inquiry, self-disclosure systems contain a too obvious and substantial potential for use in criminal prosecution to ignore the Fifth Amendment dangers created. From the point of view of the individual, as witnessed by Garner's situation, even the most innocuous questions may call for incriminating answers. Were these excluded from the scope of the privilege, the opportunity would arise for comprehensive schemes of self-reporting in non-criminal areas to become data banks containing numerous "admissions" of criminal activity, available without limitation to prosecuting authorities. The use of computers potentially capable of analyzing data and reporting criminal violations makes both real, and substantial, the danger that the unfettered exercise of governmental power may degenerate into a pattern of extracting confessions on forms for use in later prosecutions. The application of the privilege fulfills the traditional purpose of removing the incentive to fall into oppressive modes of prosecutorial conduct; to do otherwise would "...ultimately license widespread erosion of the privilege through 'ingeniously drawn legislation.'" Marchetti, supra, 390 U.S. at 51, 88 S.Ct. at 704.

Garner v. U.S., 501 F.2d 228, 248 (Dissenting opinion Koelsch, J.).

If no one for any reason can make a valid assertion of the Fifth Amendment testimonial privilege, then the presumption involved in this case is rational. If, however, it is possible to make valid assertions of the Fifth Amendment testimonial privilege to income or computational questions, then the presumption involved in this case is irrational. The Fifth Amendment testimonial privilege cannot be circumscribed by the nature, purposes, requirements, or goals of the statutory scheme even if the scheme is a neutral regulatory self-reporting system which compels testimony when that testimony is available for use in later criminal proceedings.

CONCLUSION

For the foregoing reasons, The Petition for Writ of Certiorari should be granted.

APPENDIX A

OPINIONS BELOW

A. OPINION OF THE TENTH CIRCUIT COURT OF APPEALS FILED JULY 5, 1984:

ORDER AND JUDGMENT

Before McWILLIAMS, McKAY, and LOGAN, Circuit Judges.

Michael L. Bulkley, a welder for the Amax Coal Company near Gillette, Wyoming, was convicted on both counts of a two-count indictment charging him with failure to file income tax returns for the years 1979 and 1980 in violation of 26 U.S.C. Sec. 7203. Bulkley appeals. We affirm.

For the year 1975, Bulkley, who had earned income of $7,991.50, filed a timely computable income tax return for which he estimated the United States

owed him a refund of $851.30. Actually Bulkley had underestimated his refund, and he was in fact refunded $861.30. Beginning in 1976, Bulkley began filing forms which were substantially similar to the forms which he filed for the years 1979 and 1980, the years here involved.

In 1979, Bulkley earned approximately $32,000 from Amax Coal Company, and in 1980 he received approximately $37,000 in wages. Although he filed a purported 1040 tax return for each year, he paid no taxes for either year. The 1040 forms Bulkley filed were introduced into evidence at trial. At the top of each form Bulkley's name was printed, and he had signed each at the end, but he gave no information concerning income received, deductions claimed, or other information upon which his tax liability could be

computed. Instead, in response to each question on the form, he wrote the word "object."

On appeal, Bulkley raises the usual matters urged in a case of this sort. He argues that to give the information which the 1040 form is designed to elicit would compel him to incriminate himself in violation of the Fifth Amendment. The requirement that an income tax return be filed does not necessarily violate the Fifth Amendment. It is conceivable that a valid claim of privilege could be asserted to specific items of information requested. "However, it is well established that the Fifth Amendment cannot be stretched so far as to absolve a taxpayer's duty to file a return." United States v. Irwin, 561 F.2d 198 (10th Cir. 1977), cert. denied, 434 U.S. 1012 (1978) (citing United States v. Sullivan, 274

U.S. 259 (1927)). As in Irwin, we find that because Bulkley's return contained no information upon which his tax liability could be determined, it constituted no return at all. Irwin, 561 F.2d at 201.

Bulkley also claims that "good faith" is a complete defense, and that the district court erred in refusing to so instruct the jury. It is true that in a prosecution under Sec. 7203 the government must show a "willful" failure to file a computable form, but "willful" is not synonymous with "bad purpose" or "evil intent." United States v. Rickman, 638 F.2d 182 (10th Cir. 1980). Similarly, where a trial court adequately instructs a jury on the issue of willfulness, an instruction on good faith is unnecessary. United States v. Pomponio, 429 U.S. 10 (1976).

Other matters urged as grounds for

reversal have been examined and are equally without merit. In short, this is but an instance where the taxpayer undisputedly did not file the tax return contemplated by Sec. 7203, and as his excuse therefor asserts that under the Fifth Amendment he need not comply with the income tax laws. The Fifth Amendment affords no protection for the purported income tax returns filed by Bulkley for the years 1979 and 1980.

Judgment affirmed.

B. ORDER DENYING PETITION EN BANC ENTERED AUGUST 1, 1984:

This matter comes on for consideration of appellant's petition for rehearing and suggestion for rehearing en banc in the captioned appeal.

Upon consideration whereof, the petition for rehearing is denied by the panel to whom the case was argued and

submitted.

The petition for rehearing having been denied by the panel to whom the case was argued and submitted, and no member of the panel not judge in regular active service on the Court having requested that the Court be polled on rehearing in banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing in banc is denied.

APPENDIX B

Sec. 6103. Confidentiality and disclosure of returns and return information.

(b) Definitions.

For the purposes of this section--

(1) Return. The term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(2) Return information. The term "return information" means--

(A) a taxpayer's identity, the

nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilitites, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, and

(B) any part of any written determination or any background file

document relating to such written determination (as such terms are defined in section 6110(b)) which is not open to public inspection under section 6110,

but such term does not include data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws.

(3) Taxpayer return information. The term "taxpayer return information"

means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates.

(4) Tax administration. The term "tax administration"--

(A) means--

(i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party, and

(ii) the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions, and

(B) includes assessment, collection, enforcement, litigation, publication, and statistical gathering functions under such laws, statutes, or conventions.

(5) State. The term "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(6) Taxpayer identity. The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number (as described in section 6109), or a combination thereof.

(7) Inspection. The terms "inspected" and "inspection" mean any examination

of a return or return information.

(8) Disclosure. The term "disclosure" means the making known to any person in any manner whatever a return or return information.

(9) Federal agency. The term "Federal agency" means an agency within the meaning of section 551(1) of title 5, United States Code.

....

(h) Disclosure to certain Federal officers and employees for purposes of tax administration, etc.

(1) Department of the Treasury. Returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.

(2) Department of Justice. In a matter involving tax administration, a return or return information shall be open to inspection by or disclosure to officers and employees of the Department of Justice (including United States attorneys) personally and directly engaged in, and solely for their use in, any proceeding before a Federal grand jury or preparation for any proceeding (or investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court but only if--

(A) the taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability in respect of any

tax imposed under this title;

(B) the treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding or investigation; or

(C) such return or return information relates or may relate to a transactional relationship between a person who is or may be a party to the proceeding and the taxpayer which affects, or may affect, the resolution of an issue in such proceeding or investigation.

(3) Form of request. In any case in which the Secretary is authorized to disclose a return or return information to the Department of Justice pursuant to the provisions of this subsection--

(A) if the Secretary has referred the case to the Department of

Justice, or if the proceeding is authorized by subchapter B of chapter 76, the Secretary may make such disclosure on his own motion, or

(B) if the Secretary receives a written request from the Attorney General, the Deputy Attorney General, or an Assistant Attorney General for a return of, or return information relating to, a person named in such request and setting forth the need for the disclosure, the Secretary shall disclose return or return information so requested.

(4) Disclosure in judicial and administrative tax proceedings. A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only--

(A) the taxpayer is a party to the

proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title;

(B) if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding;

(C) if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding; or

(D) to the extent required by order of a court pursuant to section 3500 of title 18, United States Code or rule 16 of the Federal Rules of

Criminal Procedure, such court being authorized in the issuance of such order to give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

However, such return or return information shall not be disclosed as provided in subparagraph (A), (B), or (C) if the Secretary determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(5) Prospective jurors. In connection with any judicial proceeding described in paragraph (4) to which the United States is a party, the Secretary shall respond to a written inquiry from an attorney of the Department of Justice (including a United States attorney)

involved in such proceeding or any person (or his legal representative) who is a party to to such proceeding as to whether an individual who is a prospective juror in such proceeding has or has not been the subject of any audit or other tax investigation by the Internal Revenue Service. The Secretary shall limit such response to an affirmative or negative reply to such inquiry.

(6) Withholding of tax from Social Security benefits. Upon written request of the payor agency, the Secretary may disclose available return information from the master files of the Internal Revenue Service with respect to the address and status of an individual as a nonresident alien or as a citizen or resident of the United States to the Social Security Administration or the Rail-

road Retirement Board (whichever is appropriate) for purposes of carrying out its responsibilities for withholding tax under section 1441 from social security benefits (as defined in section 86(d)).

(i) Disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration.

(1) Disclosure of returns and return information for use in criminal investigations.

(A) In general. Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under subparagraph (B),

be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to officers and employees of any Federal agency who are personally and directly engaged in--

(i) preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party,

(ii) any investigation which may result in such a proceeding, or

(iii) any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party,

solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

(B) Application for order. The Attorney General, the Deputy Attorney General, the Associate Attorney, any Assistant Attorney General, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force, established pursuant to section 510 of title 28, United States Code, may authorize an application to a Federal district court judge or magistrate for the order referred to in subparagraph (A). Upon such application, such judge or magistrate may grant such order if

he determines on the basis of the facts submitted by the applicant that--

(i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed,

(ii) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act, and

(iii) the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

(2) Disclosure of return information other than taxpayer return information for use in criminal investigations.

(A) In general. Except as provided in paragraph (6), upon receipt by the Secretary of a request which meets the requirements of subparagraph (B) from the head of any Federal agency or the Inspector General thereof, or, in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a

criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, the Secretary shall disclose return information (other than taxpayer return information) to officers and employees of such agency who are personally and directly engaged in--

(i) preparation for any judicial or administrative proceeding described in paragraph (1)(A)(i),

(ii) any investigation which may result in such a proceeding, or

(iii) any grand jury proceeding described in paragraph (1)(A)(iii),

solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

(B) Requirements. A request meets

the requirements of this subparagraph if the request is in writing and sets forth--

(i) the name and address of the taxpayer with respect to whom the requested return information relates;

(ii) the taxable period or periods to which such return information relates;

(iii) the statutory authority under which the proceeding or investigation described in subparagraph (A) is being conducted; and

(iv) the specific reason or reasons why such disclosure is, or may be, relevant to such proceeding or investigation.

(C) Taxpayer identity. For the purposes of this paragraph, a taxpayer's identity shall not be

treated as taxpayer return information.

(3) Disclosure of return information to apprise appropriate officials of criminal activities or emergency circumstances.

(A) Possible violations of federal criminal law--

(i) In general. Except as provided in paragraph (6), the Secretary may disclose in writing return information (other than taxpayer return information) which may constitute evidence of a violation of Federal criminal law (not involving tax administration) to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibilty of enforcing such law. The head of such agency may disclose such return information

to officers and employees of such agency to the extent necessary to enforce such law.

(ii) Taxpayer identity. If there is return information (other than taxpayer return information) which may constitute evidence of a violation by any taxpayer of any Federal criminal law (not involving tax administration), such taxpayer's identity may also be disclosed under clause (i).

(B) Emergency circumstances.--

(i) Danger of death or physical injury. Under circumstances involving an imminent danger of death or physical injury to any individual, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees

of any Federal or State law enforcement agency of such circumstances.

(ii) Flight from federal prosecution. Under circumstances involving the imminent flight of any individual from Federal prosecution, the Secretary may disclose return information to the extent necessary to apprise appropriate officers or employees of any Federal law enforcement agency of such circumstances.

(4) Use of certain disclosed returns and return information in judicial or administrative proceedings.

(A) Returns and taxpayer return information. Except as provided in subparagraph (C), any return or taxpayer return information obtained under paragraph (1) may be disclosed in any judicial or administrative

proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party--

(i) if the court finds that such return or taxpayer return information is probative of a matter in issue relevant in establishing the commission of a crime or the guilt or liability of a party, or

(ii) to the extent required by order of the court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure.

(B) Return information (other than taxpayer return information).

Except as provided in subparagraph (C), any return information (other than taxpayer return information) obtained under paragraph (1), (2), or (3)(A) may be disclosed in any judicial or administrative proceeding pertaining to enforcement of a specifically designated Federal criminal statute or related civil forfeiture (not involving tax administration) to which the United States or a Federal agency is a party.

(C) Confidential informant, impairment of investigations. No return or return information shall be admitted into evidence under subparagraph (A)(i) or (B) if the Secretary determines and notifies the Attorney General or his delegate or the head of the Federal agency that such admission would identify a

confidential informant or seriously impair a civil or criminal tax investigation.

(D) Consideration of confidentiality policy. In ruling upon the admissibility of returns or return information, and in the issuance of an order under subparagraph (A)(ii), the court shall give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

(E) Reversible error. The admission into evidence of any return or return information contrary to the provisions of this paragraph shall not, as such, constitute reversible error upon appeal of a judgment in the proceeding.

(5) Disclosure to locate fugitives from justice.

(A) In general. Except as provided in paragraph (6), the return of an individual or return information with respect to such individual shall, pursuant to and upon the grant of an ex parte order by a Federal district court judge or magistrate under subparagraph (b), be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any Federal agency exclusively for use in locating such individual.

(B) Application for order. Any person described in paragraph (1)(B) may authorize an application to a Federal district court judge or magistrate for an order referred to in subparagraph (A). Upon such application, such judge or magistrate may grant such order if

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he determines on the basis of the facts submitted by the applicant that--

(i) a Federal arrest warrant relating to the commission of a Federal felony offense has been issued for an individual who is a fugitive from justice,

(ii) the return of such individual or return information with respect to such individual is sought exclusively for use in locating such individual, and

(iii) there is reasonable cause to believe that such return or return information may be relevant in determining the location of such individual.

(6) Confidential informants; impairment of investigations. The Secretary shall not disclose any return or return information under

paragraph (1), (2), (3)(A), (5), or (7) if the Secretary determines (and, in the case of a request for disclosure pursuant to a court order described in paragraph (1)(B) or (5)(B), certifies to the court) that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(7) Comptroller general.

(A) Returns available for inspection. Except as provided in subparagraph (C), upon written request by the Comptroller General of the United States, returns and return information shall be open to inspection by, or disclosure to, officers and employees of the General Accounting Office for the purpose of, and to the extent necessary in, making--

(i) an audit of the Internal Revenue Service or the Bureau of Alcohol, Tobacco and Firearms which may be required by section 713 of title 31, United States Code, or

(ii) any audit authorized by subsection (p)(6),

except that no such officer or employee shall, except to the extent authorized by subsection (f) or (p)(6), disclose to any person, other than another officer or employee of such office whose official duties require such disclosure, any return or return information described in section 4424(a) in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer, nor shall such officer or employee disclose any

other return or return information, except as otherwise expressly provided by law, to any person other than such other officer or employee of such office in a form which can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(B) Audits of other agencies.

(i) In general. Nothing in this section shall prohibit any return or return information obtained under this title by any Federal agency (other than an agency referred to in subparagraph (A)) for use in any program or activity from being open to inspection by, or disclosure to, officers and employees of the General Accounting Office if such inspection or disclosure is--

(I) for purposes of, and to the

extent necessary in, making an audit authorized by law of such program or activity, and

(II) pursuant to a written request by the Comptroller General of the United States to the head of such Federal agency.

(ii) Information from secretary. If the Comptroller General of the United States determines that the returns or return information available under clause (i) are not sufficient for purposes of making an audit of any program or activity of a Federal agency (other than an agency referred to in subparagraph (A)), upon written request by the Comptroller General to the Secretary, returns and return information (of the type authorized by subsection (l) or (m) to be made available to the

Federal agency for use in such program or activity) shall be open to inspection by, or disclosure to, officers and employees of the General Accounting Office for the purpose of, and to the extent necessary in, making such audit.

(iii) Requirement of notification upon completion of an audit. Within 90 days after the completion of an audit with respect to which returns or return information were opened to inspection or disclosed under clause (i) or (ii), the Comptroller General of the United States shall notify in writing the Joint Committee on Taxation of such completion. Such notice shall include-

(I) a description of the use of the returns and return information

by the Federal agency involved,

(II) such recommendations with respect to the use of returns and return information by such Federal agency as the Comptroller General deems appropriate, and

(III) a statement on the impact of any such recommendations on confidentiality of returns and return information and the administration of this title.

(iv) Certain restrictions made applicable. The restrictions contained in subparagraph (A) on the disclosure of any returns or return information open to inspection or disclosed under such subparagraph shall also apply to returns and return information open to inspection or disclosed under this subparagraph.

(C) Disapproval by Joint Committee

on Taxation. Returns and return information shall not be open to inspection or disclosed under subparagraph (A) or (B) with respect to an audit-

(i) unless the Comptroller General of the United States notifies in writing the Joint Committee on Taxation of such audit, and

(ii) if the Joint Committee on Taxation disapproves such audit by a vote of at least two-thirds of its members within the 30-day period beginning on the day the Joint Committee on Taxation receives such notice.